IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPEAL NO.857 OF 2001

Sudam Rajya Dalvi]
Convict No.C-12266]
At present Yeravada Central]
Prison, Pune-411 006]..Appellant
(Ori.Accused)

Vs.

The State of Maharashtra]..Respondent
(Ori.Complainant)

....

Smt.Latika Nevrekar Advocate (appointed) for Appellant
Smt.Vijaymala Raja Bhosale A.P.P. for State

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CORAM: N.V.DABHOLKAR AND SMT.V.K.TAHILRAMANI,JJ.

DATE : FEBRUARY 21, 2006

ORAL JUDGMENT (PER DABHOLKAR,J.):

1. Appellant-original accused was tried in Sessions Case No.4 of 1998 by Additional Sessions Judge, Palghar, District Thane. At the conclusion of trial, the learned Sessions Judge found the appellant guilty for offence punishable under Section 302 of IPC and upon conviction, he is sentenced to suffer R.I. for life, fine of Rs.1,000/- in default R.I. for six months.

2. According to prosecution story, the incident in question took place on 10th June, 1997 at about 19-15 hours at village Dhanori Kotambipada, Taluka Panvel, District Thane. The victim of the incident namely;- Lahani was the wife of accused. Accused is said to have killed her by dealing axe blows.

. According to tenor of the prosecution evidence, it appears that prosecution had eye witnesses to the incident in the form of P.W.4 Tulsi Dalvi, P.W.5 Santibai Dalvi and P.W.6 Vijay Dalvi. However, all three witnesses are related to the accused (paternal aunt, sister-in-law and son respectively). Consequently none of them supported the prosecution story.

. According to the prosecution, accused was apprehended by people and was produced before Sarpanch. P.W.2 Rajaram Tambada upon hearing extra judicial confession from the accused, Rajaram took accused to his deputy P.W.3 Gopal Magan Malvankar. Gopal Malvankar again heard the accused. He ascertained truthfulness of the confession by visiting the place of accused where his wife was lying dead and thereafter he removed him to Police

Station Kasa and lodged complaint (Exhibit-16) about murder of Lahani wife of the accused.

. After production of the accused at the police station and lodgment of complaint by P.W.3 Gopal Malvankar, Senior Police Inspector Arun Jadhav attached to Kasa Police Station had carried out investigation. It appears that by drawing panchnama Exhibit-7, accused was arrested. At that time, a shawl worn by him around his waist was seized under said panchnama. This is because shawl was stained with blood. Inquest (Exhibit-9) of the dead body was drawn. It was noticed that victim had serious injury on the backside of the head (occipital region). There was axe injury on the back and waist in oblique direction admeasuring 5" x 2" x 5". Clothes of the victim were seized under panchnama Exhibit-10 after post mortem. After recording statements of witnesses and obtaining report of analysis regarding blood stains from the clothes of the victim as well as Lungi (shawl of the accused) charge-sheet was filed in the Court of Judicial Magistrate F.C. Palghar and after committal, the trial has ended in conviction of the appellant.

3. So far as defence of the accused is concerned, he pleaded denial of all the allegations of the prosecution. According to him, he is hauled up in a false prosecution by P.W.2 Rajaram and P.W.3 Gopal because they are his political rivals. Witnesses belonged to Congress-I whereas accused is a member of Lal Bavta Union. It is contention of the accused that he had gone to his work place, on return home, he found his wife lying dead. He started for reporting the matter to police patil when the villagers picked him up on the road and presented him at the police station.

4. Heard advocate Ms. Latika Nevrekar for the appellant and A.P.P. Smt.Vijaymala Bhosale for Respondent-State.

. Smt.Nevrekar urged that prosecution has in its kit only two extra judicial confessions which are a weak piece of evidence and therefore, the conviction cannot be sustained in the absence of corroboration. She has also tried to rely upon the defence that was attempted before the trial Court i.e. the political rivalry between the accused and

prosecution witnesses. She pointed out that the story narrated by the accused is not improbable. The accused was picked up on suspicion by the villagers and presented to the police station as murderer under the mistaken belief.

. The learned A.P.P. supported the judgment by relying upon same line of reasons as recorded by the trial Court.

5. Upon reference to judgment of the trial Court, it is evident that depositions of Sarpanch and Deputy Sarpanch namely;- P.W.2 Rajaram and P.W.3 Gopal are believed because, learned Judge felt that those corroborate each other and reliability of those stood strengthened by the fact that complaint (Exhibit-16) was promptly lodged at the police station without any opportunity for premeditation and embellishment. The complaint was registered at Kasa Police Station, as can be seen from Exhibit-16, on the same day i.e. 10th June, 1997 at 23.00 hours.

. We are not inclined to accept submission of advocate Ms.Latika Nevrekar that the extra judicial

confessions are not corroborated by any evidence on record. This is because, taking the seizure panchnamas and reports of Forensic Science Laboratory together, it can be seen that victim Lahani was a person of blood group ‘O’. This is confirmed by analysis of her blood sample as also the group of blood stains on her clothes which were seized after post-mortem. Blood group of the accused is determined to be ‘A’. On reference to Exhibit-32, it is evident that not only clothes of the victim but even shawl that was seized from the person of the accused at the time of arrest, is stained with human blood of group ‘O’. The shawl of accused having stains of human blood of the same group as that of blood group of the victim, is a corroborative piece of evidence that supports the evidence of extra judicial confession claimed to have been heard by P.W.2 Rajaram and P.W.3 Gopal.

6. Advocate Ms.Latika Nevrekar also tried to urge that the extra judicial confession was not voluntary statement by the accused. In order to substantiate such an argument, she referred to contents in the complaint Exhibit-16 and more particularly the narration by complainant Gopal

that he questioned the accused as to why did he murder his wife. Merely because, the extra judicial confession has not come spontaneously and without questioning, the same cannot be discarded as involuntary. The confession of the accused is inadmissible when the same falls within the clutches of Sections 24, 25 and 26 of the Indian Evidence Act. Certainly, this is not a confessional statement addressed to a police officer. When the accused narrated the story that he had murdered his wife only villagers and Sarpanch and Deputy Sarpanch were present. (Even police patil was not present). The statement does not appear to have been obtained by any threat, inducement or promise. Advocate Ms. Latika Nevrekar urged that presence of so many villagers by itself was imposing. On reference to panchnama of arrest, we do not find any signs of violence on the person of the accused. It is therefore, difficult to accede to the submission of advocate Ms. Latika Nevrekar that extra judicial confession claimed to have been heard by P.Ws.2 and 3, to be inadmissible because, the same is not voluntary.

7. Ms.Latika Nevrekar also tried to argue that

there was a political rivalry between P.Ws.2 and 3 on one side and the accused on the other side. This is because they belonged to different political factions in the village. Both the witnesses had admitted that they belonged to Congress-I party and accused belonged to Lal Bavta Union. However, in his cross-examination, Gopal (P.W.3) has stated that immediately after his election as Deputy Sarpanch, accused was admitted to Congress-I party. The defence has not brought on record the exact period as to when Gopal was elected as Deputy Sarpanch. But it can safely be inferred that this must be prior to the date of incident because, accused was arrested on the day of incident and thereafter, there could not have been an occasion to change political loyalty. Once it is found that accused was admitted to the same political party to which P.Ws.2 and 3 belonged, the contention that they must have framed the accused because of political rivalry, cannot survive.

8. It appears to be a case wherein the accused is grabbed by the villagers on the spot. Advocate Smt.Latika Nevrekar took us to the reply by the accused in response to Question No.14 during the

recording of his statement under Section 313 of Code of Criminal Procedure, 1973. The accused has said that "I had gone to my work place. When I returned to my house, I noticed that my wife was no more. I intended to go to police patil, however, the villagers met me on the way and took me to police station and false case is filed against me". The falsity and futility of this reply is seen within the reply itself. If the accused was walking by the street in order to approach police patil, there was no reason for few villagers to grab him all of a sudden, and take him to the police station. In trying to make such a theory, accused is conscious enough to delete part of the story that villagers had presented him initially before Sarpanch and then before the Deputy Sarpanch, who at the direction of Sarpanch carried the accused to Kasa Police Station and recorded the complaint. If the reply of the accused is to be accepted on its face value, this will at least confirm that wearing apparel of the accused was so much blood stained that even passer-by on the road could suspect him to have indulged into violence. If the reply is to be rejected as a story manufactured for the sake of defence, only other

inference possible is that he must have been apprehended on the spot itself.

9. The post mortem report was admitted under Section 294 of the Code of Criminal Procedure, 1973 (without examination of the Medical Officer). The report shows that victim had suffered; (1) incised wedge shaped injury over upper part of the occipital region admeasuring 7.5 cms. x 1.5 cm and brain deep, and (2) incised wound over lumbar region of the back oblique in direction 10 cms. x 5 cms. in centre, peritoneal cavity deep. On referring to further part of the post mortem notes, it is evident that patient had suffered fracture of occipital bone and occipital lobe of the brain was lacerated causing intra-cerebral bleeding. Consequently, the Medical Officer has recorded that death of the victim was caused by cardio respiratory failure due to fracture of skull with intra cerebral hemorrhage. Injury being sufficient, in the ordinary course of nature to result into death, is obvious from the description of internal damage and therefore, we find no hesitation to believe death to be homicidal.

10. Advocate Smt.Latika Nevrekar was critical because there was considerable delay in sending the copy of F.I.R. to the Court of Magistrate. First of all, this is lapse on the part of police station or investigating agency, that may not be reason sufficient to disbelieve P.Ws.2 and 3 without any other additional material demonstrating a possibility that initially complaint was different and time or delay in sending the copy of the F.I.R. to the Magistrate is utilised for the purpose of manufacturing and presenting different picture in the F.I.R. In the absence of any such material during the cross-examination of P.W.5 Santibai, we are not inclined to look to the evidence of P.Ws.2 and 3 with disbelief, merely because copy of F.I.R. was sent by the police station to the court of Magistrate belatedly.

11. For the reasons discussed hereinabove, we find no reason to upset the finding of the guilty, conviction and sentence.

12. The appeal therefore, is dismissed.

. Registrar (Judicial) shall forward certified copy of this judgment, free of costs; to the

appellant through prison authorities.

. With the conclusion of appeal, assignment of advocate Ms.Latika Nevrekar comes to an end, we quantify her professional charges to be Rs.2500/-.

[N.V.DABHOLKAR, J.]

[SMT.V.K.TAHILRAMANI,J.]